IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRA/682 / 2001

Narayan Nana Jarad . ... Applicant
vs.
Raghunath D. Jarad & ors. .... Respondents

Mr. A. P. Kulkarni
i/b. A.A. Kumbhakoni for applicant .

CORAM: D. G. KARNIK **J.**

DATE: 10th November, 2006

P.C.:

1. Heard learned counsel for the applicant. None present for the respondents.
2. Revision applicant is the son of the original defendant no.1, the judgment debtor. Respondent no.1 is the original plaintiff. Respondent no.1 filed a suit bearing Regular Civil Suit No. 458 of 1984 against the father of the revision applicant. For possession of the suit property. The suit was dismissed by the trial court. However, the District court allowed the appeal and passed a decree for possession of the suit property in favour of the respondent no.1.
3. Respondent no.1 filed an execution petition bearing Regular Darkhast no. 22 of 1995 for execution of the decree for possession against the revision applicant who is the heir of

the original judgment debtor. The revision applicant resisted the execution petition on the ground that the whole of the suit property was not owned by the respondent no.1 but he only had half share and the other half share belonged to the sons of Ragoba, viz. Narhari and Laxman; the revision applicant had purchased the shares of Narhari and Laxman in the suit property under a registered sale deed dated 31st August 1995 and therefore the decree was in- executable. The executing court rejected the application by an order dated 1st August 2000 and directed issuance of the warrant of possession. That order is impugned in this petition.

4. It is settled principle of law that an executing court cannot go behind the decree and is required to execute the decree as it is. In the present case the revision applicant is claiming through the judgment debtor. He is the son of the judgment debtor and claims that he has purchased share in the suit property from a third person. No defence was set up in the trial court that the suit property does not belong to the decree holder solely and that the judgment debtor or his son was a co- owner and therefore the respondent no.1 was not entitled for possession. Therefore no contention could be raised in the execution petition that respondent no.1 was not the sole owner but Narhari and Laxman were the co-owners and therefore decree cannot be executed. The trial court has rightly rejected the application of the revision applicant.

5. Learned counsel for the revision applicant referred to the decision of Jagdish Dutt and anr. v. Dharam Pal and ors. , reported in AIR 1999 SC 1694. In my view the decision has no application to the present case. In that case a joint decree for possession was passed and interest of one of the joint decree holders was required to be considered to consider whether the decree was executable. It was in these circumstances that the court held that the decree could not be given effect to without ascertaining the rights of the decree holders through partition. In the present case there is no joint decree for possession. The judgment debtor claims to have purchased some interest in the property from a third person and not from a joint decree holder. As stated earlier to hold that a third person had interest in the suit property would amount to going behind the decree which is not permissible.
6. In the circumstances there is no merit in the revision application which is hereby dismissed. Application for stay of the order is rejected.

(D.G. KARNIK J.)